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In re Application of  
William Wine et al.  
Application No. 09/851,605  
Filed: May 9, 2001  
Attorney Docket No. 4754-41

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OFFICE OF PETITIONS  
ON PETITION

This is a decision on the petition filed August 22, 2006, to withdraw the holding of abandonment of the above-identified application, which is treated under 37 CFR 1.181.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

The above-referenced application was held abandoned on January 9, 2006, for failure to timely reply to the non-Final Office Action mailed October 6, 2005. Accordingly, a Notice of Abandonment was mailed May 3, 2006.

The non-Final Office Action set a three month period for reply. Petitioner contends that he was not made aware of the due date for the reply until after the due date had passed.

Petitioner is advised that the actions or inactions of his duly authorized and voluntarily chosen representatives is not sufficient grounds for a withdrawal of the holding of abandonment and further that the applicant is bound by the consequences of those actions or inaction.<sup>1</sup>

Furthermore, there is no indication however that petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted. A copy of this decision is being mailed to petitioner as a courtesy, however, no future correspondence will be directed to the petitioner until

<sup>1</sup>Link v. Wabash, 370 U.S. 626, 633-34 (1962).

such time as appropriate instructions are received to the contrary.

In view thereof, the holding of abandonment will not be withdrawn and the notice of abandonment will not be vacated.

Petitioner or petitioner's representative may wish to file a petition to revive under 37 CFR 1.137(a) or (b). Section 1.137(b) now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:      Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned  
Petitions Attorney at (571) 272-3212.

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